

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PARKER HANNIFIN  
CORPORATION,

Plaintiff,

v.

STANDARD MOTOR PRODUCTS  
INC.,

Defendant.

C21-969 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) The Court held a telephone hearing on Wednesday, July 28, 2021, with the parties in connection with the Motion to Compel, docket no. 1, and the Motion to Quash, docket 2. For the reasons stated on the record, the Motion to Quash filed by MacKenzie and Manlowe is DENIED. SMP's Motion to Compel Attendance at a Deposition by Non-Parties Nicole MacKenzie and Robert Manlowe is GRANTED as follows:

(a) The Court concludes that the Shelton<sup>1</sup> test does not apply to the depositions of MacKenzie and Manlowe. "[W]hen a party seeks to depose a lawyer who is not serving as opposing counsel or who is not currently involved in the litigation, the court may decline to apply Shelton." Abington Emersion Cap., LLC v. Landash Corp., No. 2:17-cv-143, 2019 WL 3779779, at \*2 (S.D. Ohio Aug. 12, 2019). Because MacKenzie and Manlowe are not "opposing counsel" for purposes of the Ohio litigation,

<sup>1</sup> Shelton v. Am. Motors Corp., 805 F.2d 1323 (8th Cir. 1986).

1 the important purposes of Shelton, namely preventing harassment of opposing counsel  
2 and preventing questioning that would expose litigation strategy, are not implicated. See  
3 Abington Emersion Cap., LLC, 2019 WL 3779779, at \*2; Hedden v. City of Seattle, No.  
4 C05-999Z, 2006 WL 8454826, at \*5 (W.D. Wash. May 3, 2006). MacKenzie and  
5 Manlowe do not otherwise meet their burden to show good cause for quashing the  
6 Motion to Compel. See Fed. R. Civ. Pro. 26(c)(1).

7 (b) The Court additionally concludes that the depositions of MacKenzie  
8 and Manlowe are relevant because they represented Parker Hannafin and SMP jointly in  
9 the Barr suit, as well as other EIS-related asbestos litigation. Due to joint representation,  
10 communications of either co-client with their lawyer are not privileged as between the  
11 co-clients in a subsequent adverse proceeding. Nat'l Union Fire Ins. Co. v. Greenwich  
12 Ins. Co., No. C07-2065-JCC, 2008 WL 11343685, at \*3 (W.D. Wash. Nov. 25, 2008).  
13 Therefore, communications between MacKenzie or Manlowe with Parker Hannafin in the  
14 Barr suit or in other cases in which they jointly represented SMP and Parker Hannafin are  
15 not privileged. SMP has represented that it does not seek testimony from MacKenzie or  
16 Manlowe about their representation of Parker Hannafin in cases in which SMP was not a  
17 party. SMP Brief in Opposition (docket no. 13 at 4).

18 (c) In their Motion to Quash, docket no. 2, MacKenzie and Manlowe  
19 propose limitations to narrow the scope of their depositions. The Court will narrow the  
20 scope of the depositions as follows:

21 (i) During the depositions, should a party lodge an objection  
22 based on privilege; the other party will respect the objection, and the Ohio Court will rule  
23 on whether the privilege can be waived.

24 (ii) Manlowe will provide testimony concerning the Barr  
25 litigation and his role in providing Trial Coordination Services for SMP until December  
26 15, 2018. MacKenzie will provide testimony concerning the Barr litigation until she  
27 stopped her joint representation.

28 (iii) Neither Manlowe nor MacKenzie will provide testimony  
29 concerning any non-EIS asbestos cases where Parker Hannafin is or was defended by  
30 Williams Kastner.

31 (2) The Motion to Seal, docket no. 6, filed by MacKenzie and Manlowe is  
32 GRANTED.

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1       (3)     The deposition of MacKenzie shall occur on July 29, 2021 at 9:00 a.m. and  
2 the deposition of Manlowe shall occur on July 30, 2021 at 9:00 a.m., subject to the parties  
3 obtaining an extension of not more than three weeks from the Ohio Court. Both  
4 depositions are limited to seven hours.

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6             Dated this 29th day of July, 2021.

7                             Ravi Subramanian

8                             Clerk

9                             s/Gail Glass

10                            Deputy Clerk  
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